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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A- 1059/2001 & Cr.A- 1056/2001 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No.1059/2001

APPELLANT Hirondia Bai, W/o Phoolchand, Age about 45 years, R/o Gram Dudhniya, Thana – Baikunthpur, District Koriya (C.G.)

Versus

RESPONDENT State of Chattisgarh, through Police Station, Baikunthpur, District Koriya (C.G.)

And

Criminal Appeal No.1056/2001

APPELLANT Basant, S/o Ramcharan, Age about 30 years, R/o Gram Dudhniya, Thana – Baikunthpur, District Koriya (C.G.)

Versus

RESPONDENT State of Chattisgarh, through Police Station, Baikunthpur, District Koriya (C.G.)

CRIMINAL APPEALS u/s 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

D.B.: HON'BLE SHRI L.C BHADOO, J, &
HON'BLE SHRI SUNIL KUMAR SINHA, J.

ORAL JUDGMENT
(29.10.2007)

L.C. Bhadoo, J:-

Shri Abhay Tiwari , Counsel for the appellant - Hirondia Bai (wife of the deceased).

Mrs. Shubha Shrivastava, Counsel for the appellant – Basant (son-in-law of the deceased).

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मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Shri Akhil Mishra, Panel Lawyer for the State in both the Criminal Appeals.

Heard.

Since both these appeals are arising out of same S.T. No.267/2001, they are being disposed of by this common judgment.

The accused/appellants have preferred these appeals questioning the legality and correctness of the judgment dated 04.10.2001 passed in S.T. No.267/2001 by the learned First Additional Sessions Judge, Baikunthpur, Korea (C.G.) whereby, the learned Additional Sessions Judge after holding the accused/appellants guilty of the offence punishable under Sections 302/34 and 201 of the IPC, sentenced each of the accused/appellants to undergo imprisonment for life and one year rigorous imprisonment. However, the third accused – Balraj was acquitted.

The case of the prosecution in brief is that the accused/appellant – Hirondia Bai is the wife, whereas, accused/appellant -Basant Singh is the son-in-law of the deceased – Phoolchand. The deceased – Phoolchand and accused/appellant – Hirondia Bai used to reside together in village – Dhudhaniya, whereas, accused/appellant – Basant was residing along with his wife - Manmati (daughter of the deceased). On 26.5.2001, body of Phoolchand, wrapped in a

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

blanket was found in drainage water near Dudhniya Ratanga. The police was informed by Raghunath (PW-1), Sarpanch, who came to know about the said incident through Dhansai (PW-5). The Investigation Officer lodged Dehati Merg Intimation (Ex.P/1), left for the scene of occurrence, after giving notices (Ex.-P/2) to the Panchas. He prepared inquest (Ex.P/3) on the body of the deceased. The body identification memo (Ex.-P/4) was prepared. The accused – Hirondia Bai while in police custody gave memorandum (Ex.-P/5) regarding the place where she kept the blanket and grinding stone, in pursuance of that, blanket and grinding stone were recovered from her house under Ex-P/6. Accused – Basant while in police custody gave memorandum (Ex.-P/9) regarding the place where he kept the spear and bamboo club, in pursuance of that, he got recovered both the items under Ex.-P/10. Nails, one shirt, one Lungi of accused – Basant were seized under Ex.P/12. Blood stained soil and plain soil were seized from the house of the deceased under Ex.-P/13. Nails and sari of accused - Hirondia Bai were taken into possession under Ex.P/14. Site plan (Ex.-P/20) was prepared by Halka Patwari, whereas, site plan (Ex.P/21) was prepared by the Investigating Officer. Body of Phoolchand was sent for postmortem examination under Ex.-P/22 to the Community Health Centre, Baikunthpur, where Dr. Rameshwar Sharma (PW-14) conducted the postmortem. He opined that the cause of death was cardio respiratory arrest

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due to multiple fractures of ribs and stab injury on the abdomen. He prepared postmortem report (Ex.-P/22-A). The First Information Report was registered under Ex.P/23-A.

After completion of the investigation, charge sheet was filed against the three accused persons in the Court of Judicial Magistrate First Class, Baikunthpur, District – Korea, who in turn committed the case to the Sessions Judge, Sarguja, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish charge against the accused persons examined 14 witnesses. The statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure, in which, they denied the material appearing against them and stated that they are innocent and have been falsely implicated in the crime.

After hearing the counsel for the respective parties, learned Additional Sessions Judge convicted and sentenced the accused persons as aforementioned.

We have heard Shri Abhay Tiwari, Counsel for the appellant – Hirondia Bai, Smt. Shubha Shrivastava, Counsel for the appellant – Basant and Shri Akhil Mishra, Panel Lawyer for the State.

After hearing learned counsel for the parties, we have perused the record.

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मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

In this case, there is no ocular or direct evidence to connect the accused/appellants with the crime in question and conviction rests on the circumstantial evidence. As per the settled law, in order to rest conviction of an accused based on the circumstantial evidence, the prosecution is required to establish the following points in view of the decision of the Apex Court rendered in the matter ***Dhananjoy Chatterjee –Vs- State of W.B. reported in (1994) 2 SCC 222***, which is quoted below:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof." ~~In order to rest the conviction based on the circumstantial evidence, as has been held by the Apex Court.~~

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मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

In the present case, the prosecution has tried to establish the crime against the accused/appellants on the basis of following circumstances :

1. Accused – Basant made extra judicial confession before PW-1 – Raghunath and PW-4 – Mandhari.
2. Deceased – Phoolsingh remained missing from his house since 19.5.2001; his body was recovered on 26/5/2001. Accused/appellant – Hirondia Bai did not disclose this fact to anybody.
3. Accused – Hirondia Bai while in police custody gave memorandum (Ex.P/5), in pursuance of that she got recovered a blanket and grinding stone from her house under Ex.-P/6. Accused – Basant while in police custody gave memorandum under Ex.P/9, in pursuance of that, he got recovered one spear and Bamboo club from his house under Ex.P/10.

First Circumstance

So far as this circumstance is concerned, PW-1 - Raghunath has stated that he is the Sarpanch of the Village. He was informed by Dhansai about the body lying in the *Nala*. Thereafter, he along with Rajbal, Ramsingh, Shivbal went there, saw the body and gave Dehati Merg Intimation (Ex.P/1) to the police. Body was taken out of the *Nala*, Body

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Identification Memo (Ex.P/4) was prepared. In para 10 of his evidence, he has stated that accused- Basant has not made any extra judicial confession before him. He stated that Basant disclosed to all the persons that he threw the body of Phoolchand. He disclosed the same where the Police was investigating the matter. On enquiry by the Police, he stated that grinding stone was used for attacking on the chest of Phoolchand. Therefore, in view of the above evidence of this witness that accused/appellant and Basant made extra judicial confession in presence of the Police is hit by Sections 25 & 26 of the Evidence Act and the same is not admissible in evidence.

Mandhari (PW-4) in para 3 of his evidence has stated that accused - Basant made extra judicial confession before him that he along with Balraj and Hirondia Bai threw the body of Phoolchand in a drain. In cross-examination, this witness has stated that at that time, Police was at a distance of 15 ft. and continuously for 3 days, Police was investigating from the persons in the village, after threatening them. He stated that the Police persons also assaulted the villagers. Therefore, on account of police fear, accused - Basant made the said statement; he did not disclose anything voluntarily. In view of the above also, the evidence of this witness regarding extra judicial confession is not admissible in evidence. Therefore, the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 8	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

finding of the trial Court regarding extra judicial confession cannot be sustained.

Second Circumstance

As far as this circumstance that the deceased was missing from his house since 19.5.2001 is concerned, his body was recovered on 26.5.2001 in the *Nala,* but Hirondia Bai did not disclose this fact to anybody, this is a very weak type of circumstance. Merely on this evidence, Hirondia Bai cannot be connected with the crime in question. Moreover, Manmati (PW-7-daughter of the deceased) has categorically stated that his father used to practice witchcraft. He used to remain outside the house for 10-15 days. When the deceased used to remain outside the house for 10-15 days in connection with his work of witch-craft, it is not expected that Hirondia Bai would have suspected the death of her husband and that she deliberately did not disclose this fact to anybody. Therefore, this circumstance is of no use to connect the accused- Hirondia Bai with the crime in question.

Third Circumstance

So far as this circumstance that accused – Hirondia Bai gave memorandum (Ex.-P/5), in pursuance of that, she got recovered one blanket and grinding stone and accused – Basant gave memorandum (Ex.-P/9), in pursuance of that, he got recovered spear and bamboo club under Ex.-P/10 is

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 9	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

concerned, these are the common items found in the house. It has been mentioned that the said articles were stained with blood, but there is no FSL report that the blood was of human blood and that too of the blood group of the deceased. Therefore, on the basis of these recoveries, accused/appellants – Hirondia Bai and Basant cannot be connected with the crime in question. Accordingly, the finding of the trial Court connecting the accused persons with the crime in question based on recovery of the articles cannot be sustained.

Virtually, there is no evidence available on record to connect the accused/appellants with the crime in question.

In the result, the appeals succeed. The conviction and sentence imposed upon the accused/appellants under Sections 302/34 and 201 of the IPC are set aside.

It is stated that accused – Basant is on bail, therefore, his bail bonds are discharged. Accused – Hirondia Bai is said to be in detention since 29/5/2001. She is in detention since more than 6 years, therefore, she be set at liberty forthwith if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

Shyna